

RESPONSE TO INTERVIEW SUMMARY

In response to the interview conducted on May 22, 2009 between the Examiner and the Applicants' attorney, the Applicants submit the following summary.

During the interview, the Applicants' attorney asked the Examiner for clarification regarding the Examiner's request for further explanation as to the correlation between Examples 1-3 of United States Patent No. 6,013,682 to Dalle et al. and Comparative Examples 1-3 of the subject application. The Examiner stated that such a further explanation could be a more in depth explanation than was previously provided, or could be provided via additional Examples. The Applicants also discussed the fact that the prior art of record did not disclose, teach, and/or suggest independent claim 1 of the subject application, even with the current scope of this claim.

REMARKS

Claims 1, 3-5, 8-10 and 12 are pending in the application with Claims 1 and 8 in independent form. No claims are amended, cancelled or withdrawn in the present Response.

Claims 1, 3-5, 8-10 and 12 stand rejected under 35 U.S.C. §103(a) as unpatentable over United States Patent No. 6,013,682 to Dalle et al. (the ‘682 patent) in view of Lochhead, Robert Y., "Encyclopedia of Polymers and Thickeners for Cosmetics," Cosmetics and Toiletries, 108 (1993) (Lochhead et al.). Claims 1, 3-5, 8-10 and 12 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,143,310 to Sang et al. (the ‘310 patent) in view of the ‘682 patent.

In response to the Declaration filed with the Applicants’ previous Response, the Examiner has set forth several reasons as to why the Examiner doesn’t believe that Comparative Examples 1-3 of the subject application correspond to Examples 1-3 of the ‘682 patent. Namely, the Examiner contends that:

- (1) no emulsions are formed in the ‘682 patent;
- (2) the platinum catalyst is added prior to the preparation of an emulsion in the ‘682 patent, but not in Comparative Examples 1-3 of the subject application;
- (3) different ratios of components are utilized in the Examples of the ‘682 patent and the Comparative Examples of the subject application; and that
- (4) mixtures of ethers are included in the Comparative Examples of the subject application, but not in the ‘682 patent.

As described additionally below, each of these contentions by the Examiner is incorrect. Therefore, the Applicants respectfully request reconsideration of the previously filed Declaration, the contents of which are hereby incorporated by reference.

With respect to the '682 patent, the Examiner contends that the '682 patent discloses a linear organosilicon polymer whose main chain is composed of diorganosiloxane units and alkylene units. However, the Examiner admits that the '682 patent fails to disclose an oil that is liquid at room temperature and that does not contain hydrosilation reactive groups, as claimed in the present application. Therefore, to address this deficiency of the '682 patent, the Examiner relies on Lochhead et al. and contends that Lochhead et al. discloses dimethicone, which is an oil that is liquid at room temperature and does not contain hydrosilation reactive groups, as a conventional ingredient in cosmetic compositions. Thus, the Examiner contends that it would be obvious to incorporate the dimethicone of Lochhead et al. into the silicone emulsion containing cosmetic composition of the '682 patent.

With respect to the '310 patent, the Examiner contends that the '310 patent discloses cosmetic compositions comprising a continuous oil phase that may include linear polydimethylsiloxanes, which are liquids at room temperature and do not contain hydrosilation reactive groups. Thus, the '310 patent and Lochhead et al. are utilized by the Examiner for the same purpose, and the Examiner correlates each to Component (B) of the present claims. In addition, the Examiner admits that the '310 patent fails to disclose the use of a linear organosilicon polymer with a main chain composed of diorganosiloxane units and alkylene

units, as claimed in the present application. Therefore, to address this deficiency of the ‘310 patent, the Examiner relies on the ‘682 patent for the same purposes described above.

The Applicants appreciate that Lochhead et al. and the ‘310 patent may teach different ratios of different siloxanes, however, because different ratios of different siloxanes are not presently claimed in the subject application, this contention by the Examiner is irrelevant as to the purposes for which these references are being relied upon by the Examiner.

Despite the Declaration filed with the Applicants’ previous Response, the Examiner apparently fails to see a correlation between Examples 1-3 of the ‘682 patent correspond to Comparative Examples 1-3 of the subject application. In particular, the Examiner contends that “Examples 1-3 of [the ‘682 patent] results in the preparation of component (A) of the instant claims and no emulsions are actually formed in these examples.” (emphasis added). However, the Applicants respectfully direct the Examiner to Column 8, lines 4-6, which explicitly describes “[t]he resultant emulsions” formed in Examples 1-3. Therefore, contrary to the Examiner’s contention, **emulsions are in fact formed** in Examples 1-3 in the ‘682 patent.

The Examiner also contends that in the Examples of the ‘682 patent, the platinum catalyst was added prior to the preparation of an emulsion, and the same is not true in the Comparative Examples in the subject application. However, the Applicants respectfully point out that in both Comparative Examples 2 and 3 of the subject application, the platinum catalyst is also added prior to the preparation of an emulsion such that the order of addition is the same in the Examples of the ‘682 patent and Comparative Examples 2 and 3 of the subject application, contrary to the Examiner’s contentions.

In addition, the Examiner contends that Comparative Examples 1-3 of the subject application recite the use of completely different ratios of dimethylpolysiloxane blocked at both ends with dimethylvinylsiloxy groups to dimethylpolysiloxane blocked at both ends with dimethylhydrogensiloxy groups. The Applicants respectfully point out that, in the '682 patent, the amounts of each respective component are not set forth on a 100 parts by weight basis of the total weight of the composition. Therefore, a proper conversion must be made prior to comparing ratios. For Example, in Examples 1-3 of the '682 patent, 29 parts of dimethylvinylsiloxy terminated polydimethylsiloxane are mixed with from 0.9 to 1.15 parts of a liquid organohydrogenpolysiloxane. Therefore, the ratio of dimethylvinylsiloxy terminated polydimethylsiloxane to the liquid organohydrogenpolysiloxane ranges from 29 : 0.9 to 29 : 1.15. Stated differently, the dimethylvinylsiloxy terminated polydimethylsiloxane is used in a weight excess of from 32.2 to 25.2 times the weight of the liquid organohydrogenpolysiloxane in the '682 patent. In Comparative Examples 1-3 of the subject application, 98 parts by weight of dimethylpolysiloxane having both ends of the molecular chain blocked by dimethylvinylsiloxy groups (which is a dimethylvinylsiloxy terminated polydimethylsiloxane) and 2 parts by weight of dimethylpolysiloxane having both ends of the molecular chain blocked by dimethylhydrogensiloxy groups (which is an organohydrogenpolysiloxane) are used. Therefore, the dimethylvinylsiloxy terminated polydimethylsiloxane is used in a weight excess of 49 times the weight of the organohydrogenpolysiloxane in Comparative Examples 1-3 of the subject application. Thus, although the ratios are not exactly equivalent, they are certainly similar. Further, the Applications point out that although the ratios utilized in the '682 patent

may slightly differ from those utilized in Comparative Examples 1-3 of the subject application, what is claimed in the subject application is a linear organosilicon polymer whose main chain is composed of diorganosiloxane units and alkylene units. Notably, both Comparative Examples 1-3 of the subject application and Examples 1-3 of the ‘682 patent produce a linear organosilicon polymer whose main chain is composed of diorganosiloxane units and alkylene units, even if ratios of components utilized to form the linear organosilicon polymer may slightly differ. Thus, Comparative Examples 1-3 of the subject application and Examples 1-3 of the ‘682 patent are commensurate in scope with the claimed component (A) in the subject application, regardless of these ratios. Because Comparative Examples 1-3 of the subject application form a linear organosilicon polymer whose main chain is composed of diorganosiloxane units and alkylene units, and because the Examiner is using the ‘682 patent to disclose such a linear organosilicon polymer, the Applicants believe that these Comparative Examples are comparable to the closest cited prior art, contrary to the Examiner’s contentions.

Finally, the Examiner argues that in Comparative Examples 1-3 of the subject application, prior to mixing with a platinum catalyst, two different mixtures of a secondary tetradecyl ether with a secondary dodecyl ether of ethylene oxide with different HLB values are added and an emulsion is formed. However, the Applicants submit that in Comparative Example 2, the dimethylpolysiloxane having both ends of the molecular chain blocked by dimethylvinylsiloxy groups is mixed with the dimethylhydrogensiloxy groups and subsequently mixed with the platinum catalyst without ever including a secondary tetradecyl ether or a secondary dodecyl ether. Stated differently, Comparative Example 2 illustrates the exact same

order of addition as Examples 1-3 in the ‘682 patent, and the physical properties obtained from the emulsion formed therein are still undesirable. Therefore, the Applicants believe the Examiner has improperly assumed that each of the Comparative Examples 1-3 of the subject application include similar steps of forming emulsions with the same components, which is clearly not the case.

To summarize, the Examiner has set forth several reasons as to why the Examiner doesn’t believe that Comparative Examples 1-3 of the subject application correspond to Examples 1-3 of the ‘682 patent. Namely, the Examiner contends that:

- (1) no emulsions are formed in the ‘682 patent;
- (2) the platinum catalyst is added prior to the preparation of an emulsion in the ‘682 patent, but not in Comparative Examples 1-3 of the subject application;
- (3) different ratios of components are utilized in the Examples of the ‘682 patent and the Comparative Examples of the subject application; and
- (4) mixtures of ethers are included in the Comparative Examples of the subject application, but not in the ‘682 patent.

In response to each of the Examiner’s contentions, and as set forth above in greater detail above, the Applicants submit that:

- (1) emulsions are formed in the ‘682 patent;
- (2) the platinum catalyst is added prior to the preparation of an emulsion in Comparative Examples 2 and 3 of the subject application;

(3) the ratios are much closer than the Examiner is appreciating. Furthermore, the ratios are irrelevant because this is not a claimed feature of the subject invention and the claimed component encompasses those formed from all ratios of respective components; and

(4) mixtures of ethers are not included in Comparative Example 2 of the subject application. As such, the Applicants believe they have properly explained how Examples 1-3 of the '682 patent correspond to Comparative Examples 1-3 of the subject application, as required by the Examiner.

The Examiner is respectfully reminded that “[e]vidence of unobvious or unexpected advantageous properties, such as superiority in a property the claimed compound shares with the prior art, can rebut *prima facie* obviousness.” MPEP § 716.02(a). In addition, “[e]vidence that a compound is unexpectedly superior in one of a spectrum of common properties . . . can be enough to rebut a *prima facie* case of obviousness.” *In re Chupp*, 816 F.2d 643, 646, 2 USPQ2d 1437, 1439 (Fed. Cir. 1987). The Applicants respectfully request that the Examiner reconsider the Declaration filed with the Applicants' previous Response in view of the further explanation as to how Examples 1-3 of the '682 patent correspond to Comparative Examples 1-3 of the subject application, as required by the Examiner, as the Declaration clearly shows unexpected results obtained by an aqueous emulsion comprising as the disperse phase a mixture comprising (A) a linear organosilicon polymer whose main chain is composed of diorganosiloxane units and alkylene units and (B) an oil that is liquid at room temperature and does not contain hydrosilation-reactive groups, wherein the weight

ratio of component (A) to component (B) in said mixture is (A):(B) = 1:0.5 to 1:50, as claimed in the subject application.

In view of the foregoing, the Applicants respectfully submit that independent claim 1, as well as claims 3-5, which depend from claim 1, and independent claim 8, as well as claims 9-10 and 12, which depend from claim 8, are both novel and non-obvious over the prior art including over the '682 patent, Lochhead et al., and/or the '310 patent. As such, the Applicants submit that the claims are in condition for allowance and respectfully request such allowance. While it is believed that no additional fees are presently due, the Commissioner is authorized to charge the Deposit Account No. 08-2789, in the name of Howard & Howard Attorneys PLLC for any fees or credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

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Date

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